UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LORI FLETCHER,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 98-0105-B
	)	
TOWN OF CLINTON, et al.,	)	
	)	
Defendants	)	

MEMORANDUM OF DECISION[1]

This action is before the Court on Defendants' Motion for Summary Judgment, filed November 27, 1998. Defendants are the Town of Clinton, and two police officers employed by the Town (Defendants Bessey and Genest). Plaintiff alleges violations of her right to be free from unreasonable searches and seizures under the Fourth Amendment, and various state law torts, arising from her arrest on July 31, 1997.

Factual Background

On the evening of July 31, 1997, Defendants Genest and Bessey drove by Plaintiff's apartment while on routine patrol. They saw Plaintiff and William McDonald through the window. Mr. McDonald was, at the time, subject to a

[1] Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

protection order issued on July 17, 1997 prohibiting him from being in contact with Plaintiff or from being in the vicinity of her home.

Defendants knocked on Plaintiff's door and asked to enter for the purpose of locating Mr. McDonald. Plaintiff refused them entry and denied that Mr. McDonald was in the apartment. Defendants nevertheless entered the apartment, and during their subsequent attempts to arrest Mr. McDonald, Plaintiff was ultimately arrested for hindering apprehension and escape.

Discussion

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

I. Qualified Immunity.

The individual Defendants argue that they are entitled to qualified immunity on Plaintiff's federal claims. Qualified immunity shields government officers "'from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.'" *Hegarty v. Somerset County*, 53 F.3d 1367, 1373 (1st Cir. 1995) (quoting *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). This doctrine provides for the "inevitable reality that 'law enforcement officials will in some cases reasonably but mistakenly conclude that [their conduct] is [constitutional], and . . . that . . . those officials -- like other officials who act in ways they reasonably believe to be lawful -- should not be held personally liable.'" *Id*. (quoting *Anderson*, 483 U.S. at 641).

The qualified immunity inquiry has two prongs. First we must determine whether the right asserted by Plaintiff was clearly established at the time of the contested events. *Id*. at 1373. In the context of summary judgment the second prong is whether, viewing facts in a light most favorable to Plaintiff, "an *objectively* reasonable officer, similarly situated, *could have believed* that the challenged . . . conduct did *not* violate" that clearly established right. *Hegarty*, 53 F.3d at 1373. (emphasis in original).

a. Clearly Established Right.

On the first question, there is clearly no dispute that the Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures. However, we must go one step further and determine whether the specific contours of the right were sufficiently established such that an officer could understand how the law would be applied to his or her actions *in this case*. *Anderson*, 483 U.S. at 640.

The Court begins with the longstanding rule that officers may enter the home of a third-party to effectuate an arrest only under the authority of a valid search warrant, unless there are exigent circumstances, such as "hot pursuit" justifying the entry. *Steagald v. United States*, 451 U.S. 204, 213-14 (1981), *cited in Joyce v. Town of Tewksbury*, 112 F.3d 19, 21-22 (1st Cir. 1997). In Defendants' view, the state of the law regarding exigent circumstances in cases of domestic violence is not clearly established for purposes of our qualified immunity analysis. Indeed, in *Joyce*, summary judgment was granted on that basis to officers who, without invitation or warrant, followed a suspect into his parents' home after he answered their knock at the door. *Joyce*, 112 F.3d at 23.[2] The court found it to be unclear whether the officers' actions were "reasonable," the fulcrum of exigent circumstances analysis.

[2] This Court agrees with Defendants that the court in *Joyce* found the law to be unsettled, and did nothing to resolve it. Contrary to Defendants' assertion, however, the decision was issued approximately three months *before* the events giving rise to this action.

Id. at 22. Bearing on the question, on the one hand, was the court's view that domestic violence amounts to a "'grave offense affecting our society.'" *Id*. (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984)). On the other, the court noted the lack of evidence regarding whether the conduct leading to the protective order involved "actual violence," and repeated its suggestion that "'mitigating facts' may undermine an exigency showing, including any inadequacy in the opportunity afforded for a peaceable surrender and the fact that entry occurs at nighttime." *Id*. (citing *Hegarty v. Somerset County*, 53 F.3d 1367, 1374 (1st Cir. 1995)).

The record in this case contains a wealth of "mitigating facts" such that, however unsettled the law might have been on the facts as presented in *Joyce*, it was not unsettled for these officers in July of 1997. The officers' own conduct relative to this incident, as revealed in this record, belies their current assertion that they believed exigent circumstances justified their entry into Plaintiff's home. Specifically, the officers were told at approximately 6:00 p.m. that Mr. McDonald had been at Plaintiff's house earlier in the day. They confirmed the validity of the Protective Order prior to leaving on patrol, but then did not drive past Plaintiff's apartment until approximately three hours later. Genest Aff., Def. Ex. A, at ¶¶ 5-6; Bessey Aff., Def. Ex. B, at ¶¶ 4-5.

Defendant Genest did not complete the paperwork relevant to this incident during his shift that evening. The following day when the Chief of Police contacted Defendant Genest at home because Mr. McDonald was seeking to turn himself in, Defendant Genest indicated he had not yet written a summons, but that the Chief should do it under his name. Pltf. Ex. D.

This apparent lack of haste is not surprising in light of the officers' prior dealings with Plaintiff and Mr. McDonald. As described by the officers in their Affidavits, they were aware of three incidents in which Plaintiff sought law enforcement assistance relating to Mr. McDonald. Defendant Genest describes the three incidents as follows:

> 1. On May 22, 1997, I was dispatched to Lori Fletcher's apartment after she called the Clinton Police Department to report that she [was] having trouble with her boyfriend, William McDonald. She reported that he was extremely angry, and that he had thrown her kitten. When I arrived Ms. Fletcher advised me that the situation was under control. No arrest was made as a result of that complaint.
> 2. On June 6, 1997, I was again dispatched to Ms. Fletcher's apartment after she called the police department to request that we remove Mr. McDonald from her apartment because he was drunk and threatening to hurt her. At the scene Mr. McDonald continually tried to reenter the residence, despite our orders that he not do so and being advised we would arrest him if he continued. As a result, Mr. McDonald was arrested. When he was released on bail, Mr. McDonald's bail conditions required that he have no contact with Ms. Fletcher.

> 3. On July 16, 1997, I spoke with officers from Kennebec County and the Maine State Police who had responded to a complaint by Ms. Fletcher that Mr. McDonald had again trespassed on her property and threatened her, in violation of his bail conditions from his June arrest. I understood that Mr. McDonald had fled the scene and these officers were searching for him. . . .

Genest Aff., Def. Ex. A, at 1-2. Despite her complaints that Mr. McDonald had "threatened" her, on each occasion these officers were confronted with a situation that amounted to nothing more than trespass. Plaintiff did not allege in her Complaint for Protection from Abuse that Mr. McDonald had ever harmed her; in fact, despite her statement that she feared for her own safety, she had only described his threats as directed toward her car and "belongings." Def. Ex. D. In addition, when the officers arrived at Plaintiff's apartment and looked in the window, they saw nothing to suggest Plaintiff was in danger.

On this record the Court concludes that the law regarding exigent circumstances is not muddled; there simply were none in this case. The Court is therefore left with the clearly established right of a person against intrusion into the home for the purpose of arresting another without a search warrant.

b. Objectively Reasonable Conduct.

The second question is whether Defendants could have reasonably believed their actions did not violate that clearly established right. In this case the question has

been answered. For the reasons stated above, the Court concludes Defendants could not have reasonably believed that the facts facing them on July 31, 1997 amounted to exigent circumstances, whether characterized as "hot pursuit" or otherwise, justifying their entry into Plaintiff's home without a warrant.[3]

II. Town of Clinton.

Defendant Town of Clinton also seeks judgment for the reason that it could not have been "deliberately indifferent" to training with regard to law that was not clearly established. For the reasons outlined above, the Court is satisfied that the law was clearly defined as it applied to this case. The Town's Motion for Summary Judgment on Plaintiff's federal claim is also properly denied.

III. Discretionary Function Immunity.

Defendants seek judgment on Plaintiff's state law claims on the basis of discretionary function immunity, which is an absolute immunity, protecting police officers from liability for discretionary functions performed in the scope of their employment, even if that discretion is abused. 14 M.R.S.A. § 8111(1)(C). The only exception to that immunity is that the officers' conduct may not "'clearly exceed[], as a matter of law, the scope of any discretion [they] could have possessed in [their]

[3] Having concluded on this record that Defendants should not have been inside Plaintiff's home, the Court will not address their argument that events occurring within her home also justified her subsequent arrest.

official capacity as police officer[s].'" *McLain v. Milligan*, 847 F. Supp. 970, 977 (D. Me. 1994) (quoting *Polley v. Atwell*, 581 A.2d 410, 414 (Me. 1990)). In the case of a warrantless arrest, the scope of a police officer's discretion is exceeded when the officer acts "wantonly or oppressively" in making the arrest. *Id*. (citing 15 M.R.S.A. § 704; *Leach v. Betters*, 599 A.2d 424 (Me. 1991)).

The strict application of this immunity is best expressed by the circumstances at issue in *McLain*. In that case, as here, the officers were in the home without the resident's consent. In that case, as here, the plaintiff was arrested for conduct which would not have occurred *except* for the officers' presence in the home. The Court nevertheless held, as we do here, that the officers were immune from liability for alleged tort violations arising out of the entry into plaintiff's home, the determination of probable cause, and the decision to file charges. *Id*. at 978. In our case, Defendants Genest and Bessey are thus immune from liability on Plaintiff's claims for trespass (Count V), invasion of privacy (Count VI), false imprisonment (Count VII), and infliction of emotional distress (Count VIII). Unlike the Plaintiff in *McLain*, however, Plaintiff has failed to generate a genuine issue of material fact on the question whether Defendants used a wanton and oppressive amount of force in

effectuating her arrest. Accordingly, Defendants in this case are also immune from liability on the assault claim (Count IV).[4]

IV. 1 M.R.S.A. § 409.

Defendant Town of Clinton correctly argues that Plaintiff's claim under the Maine Freedom of Access Act is not properly before the Court because it is untimely. A failure to respond to a proper request under the Act within five days is deemed a denial of the request. *Cook v. Lisbon School Comm.*, 682 A.2d 672, 680 (Me. 1996). Unlike in the case of a written denial, from which an appeal must be filed within five working days, an appeal from a failure to respond must be filed within 30 days pursuant to Me. R. Civ. P. 80B. *Id*. at 679 n.2. Plaintiff's Complaint, dated May 15, 1998, indicates that the requests for which she seeks sanctions were made on September 25, 1997, and October 31, 1997.

Plaintiff's argument that an appeal is not the exclusive remedy is unavailing. 1 M.R.S.A. § 409(3). To the extent Plaintiff is asserting that section 410 constitutes "any other civil remedy provided by law," Plaintiff's claim fails because only the Attorney General or his representative may seek fines pursuant to that section. *Cook*,

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[4] Defendant Town of Clinton argues that it is also immune from liability under the Maine Tort Claims Act. Plaintiff does not respond to this argument in her objection to the Motion for Summary Judgment. Indeed, it is apparent from the face of her Complaint that she did not intend to proceed against the Town on the state tort counts. Accordingly, the Court need not address the issue of the Town's immunity.

682 A.2d at 680. To the extent Plaintiff has other law in mind, she has not invoked it in this Complaint. Accordingly, Plaintiff's claim in Count IX of her Complaint is properly dismissed.

Conclusion

For the foregoing reasons, I Defendants' Motion for Summary Judgment is hereby GRANTED as to Counts IV through IX, and DENIED as to Counts I through III.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on March 3, 2000.